O.R.L.

office of the registrar of lobbyists

BRITISH COLUMBIA

2011-2012 Annual Report

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August 8, 2012

The Honourable Bill Barisoff
Speaker of the Legislative Assembly of British Columbia
Office of the Speaker
Parliament Buildings
Victoria, BC V8V 1X4

Honourable Speaker:

In accordance with s. 9.1(1) of the *Lobbyists Registration Act*, I have the honour to present the Office of the Registrar of Lobbyists Annual Report to the Legislative Assembly.

This report covers the period from April 1, 2011 to March 31, 2012.

Sincerely yours

Elizabeth Denham
Registrar of Lobbyists for British Columbia

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REGISTRAR'S MESSAGE

Two years ago, the new *Lobbyists Registration Act* ("LRA") came into force, ushering in new disclosure requirements and conflict of interest rules, broadening the definition of lobbying, lowering registration thresholds and expanding enforcement powers for the Registrar.

During our first year, by focusing our energy on training and education, the ORL worked hard to ensure lobbyists in British Columbia understood the new rules. We worked closely with our Lobbyists Advisory Committee to get feedback on our implementation strategy and acted on their feedback in our compliance initiatives. We issued advisory bulletins and online newsletters clarifying registration requirements, identified common registration trouble spots and solutions and provided real-time advice and assistance to registrants. Through ongoing dialogue and consultation, we have worked out the major compliance kinks.

This concentrated outreach strategy has resulted in a substantial increase in registrations.

Although we continue to rely on education and outreach as key compliance tools, in the past year we focused more of our energy and attention on enforcement. It is the legal obligation of designated filers to ensure their registrations are submitted on time, that they are complete and accurate, and that they are updated within 30 days of any change occurring.

The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to declare their lobbying activities publicly and to allow citizens to search the registry to see for themselves who is attempting to influence government. The registry will provide that transparency only if the information in it is complete, accurate and up-to-date. Late registrations, incomplete registrations or registrations containing outdated information serve only to undermine the intent of the legislation.

This year, we issued the first administrative penalties, and we expect to use this compliance tool again during the remainder of the year. We expect designated filers to be diligent and accurate in filing and updating their lobbying registrations.

We also expanded our outreach activities this year to foster discussions about lobbying and lobbying regulation among a wider audience including lobbyists, academics, oversight agencies and public office holders. In December, 2011, we co-hosted with the Simon Fraser University's Institute of Governance Studies a day-long seminar on lobbying regulation called, "Why the Road Exists and Where the Rubber Hits It." At this meeting, 100 participants discussed lobbying issues ranging from cooling-off periods to codes of conduct, to thresholds for registration, to enforcement challenges. We believe that this was the first seminar on lobbying regulation to bring together regulators,

lobbyists and observers from across Canada and the United States. I offer a very special thanks to Professor Patrick Smith of Simon Fraser University for his leadership and support for this project.

We launched a public consultation on the possible development of a BC lobbyist code of conduct. We expect to table a report on that consultation with the Legislative Assembly at the end of this calendar year.

I was pleased to appear before the Parliamentary Committee on Access, Privacy and Ethics in February of this year. The committee engaged in a review of the federal *Lobbying Act*, which is mandated to occur at least every five years. The committee recently released its report and recommended, among other things, that the federal Commissioner of Lobbying be given the power to levy administrative penalties. This amendment was recommended in my submission, as well as in that of others who appeared before the committee.

It is unfortunate that no similar mandatory review provision exists in the BC LRA. We have been able to work out process and system kinks, but without a periodic review of the legislation's efficacy, we are unable to work out the legislative problems that I believe should be addressed to promote greater transparency, level the playing field, ease registration and harmonize with developments taking place across the country. I nevertheless intend to provide my recommendation for legislative amendments to the BC LRA to the Minister of Justice and Attorney General and table them in the fall with the Speaker of the BC Legislative Assembly.

I want to take a moment to acknowledge our Lobbyists Advisory Committee, which provided our office with assistance in implementing the amended LRA between 2009 and 2011. The members of this committee not only gave us valuable feedback in the early days, but also acted as a communication bridge between our office and the lobbying community. Many thanks to Keith Bell, Serge Corbeil, Kim Logan, Summer McFadyen, Geoff Morrison, Kathryn Seely and Steve Vander Wal for their support and assistance during the past two years. The role of this committee is winding down, in part because the heavy lifting with respect to implementation is finished, but also partly because of the recent establishment of a core membership for a BC industry association for lobbyists. Although in its formative stages, this group will be a principal industry association representing lobbyists in the province, and I anticipate it will take on the consultation and feedback functions formerly provided by the Lobbyists Advisory Committee. I look forward to establishing a productive relationship with the new industry association as it develops.

I would also like to thank my dedicated colleagues Carol Searle, Registry Manager, Jacqueline Howse, Policy and Compliance Analyst and Mary Carlson, Deputy Registrar of Lobbyists. Their teamwork, energy and commitment to providing responsive public service are deeply appreciated.

Elizabeth Denham
Registrar of Lobbyists for BC

1. LOBBYING: LEGAL, LEGITIMATE AND MISUNDERSTOOD

In the past century, the practice of lobbying has grown across Canada. Paul Pross, professor Emeritus of Dalhousie University's School of Public Administration, describes some of the factors contributing to this growth:

> The 20th century witnessed immense changes in the roles of government and the processes they used to develop policy. For some fifty years, through the Depression, World War II and their aftermath, Canadians created a welfare state, which entailed establishing complex bureaucracies and decision-making processes. So complex, in fact, that it became difficult for governments and members of the public to communicate with each other. At the grass roots, citizens found that political parties were losing the ability to carry their messages to policy makers. [1]

Sophisticated lobbying enterprises, business interest groups, and industry associations formed partly in response to this increasing complexity of the business of government.

Lobbying laws regulate the legal activity of lobbying. In BC, to "lobby" means to communicate, for payment, with a public office holder, in an attempt to influence one of several articulated outcomes, including the introduction, defeat or amendment of legislation, the awarding of a contract, the privatization of government services, or the development or amendment of a government program, policy or directive. The primary objective of lobbying laws is to ensure lobbying is conducted in a publicly transparent fashion. Public trust in government decision-making requires that the public have an accounting of who is attempting to influence government. The BC LRA requires lobbyists to declare on whose behalf they are lobbying, on what subject matter, toward what outcome and who they are targeting within government.

Not all attempts to influence government decision-making are lobbying under the law. Citizens and organizations do not need to register in order to voice their concerns to public office holders about how an existing government program is being administered, to challenge decisions made under existing laws and to present their thoughts to a legislative committee in public hearings, because these activities do not fit the legal definition of lobbying. Similarly, citizens voicing personal concerns or urging actions that they think should be undertaken by government need not register, because lobbying laws specifically avoid capturing citizens' individual communications with government. Lobbying laws relate only to individuals who attempt to influence government decisions *for payment* either as part of their paid job duties ("in-house lobbyists") or as consultants paid to represent their clients' interests ("consultant lobbyists").

Lobbying is a valuable component of modern democratic processes, but its value is not always recognized. In fact, it can be misunderstood and subject to excessive and unwarranted criticism. Lobbying occurs across government on any imaginable topic, and most day-to-day lobbying efforts

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[1] Pross, Paul. Roadworks: The Construction of Canada's Lobby Laws." *Influencing BC*, Volume 2, Issue 2. May 2012.

are so unremarkable that they are almost mundane. Last year in British Columbia, lobbyists communicated with public office holders in an attempt to influence a wide range of decisions related to supporting, opposing, introducing, amending, terminating, extending or funding, among other issues: access to Asian markets for the liquid natural gas sector, fire bans in RV parks, First Nations interim agreements, hydraulic fracturing, pay day lending regulations, liquor distribution, low cost housing and the protection of children in the workplace.

Citizens and organizations have a fundamental right to be involved in decisions that affect them, and lobbyists who advocate for causes of interest to the public are part of robust civic debate. It is not possible for public decision-makers to always be aware of the broad consequences of their decisions. Lobbyists make an important contribution to informed decision-making by bringing critical information to decision-makers about the possible effects of their decisions.

2. COMPLIANCE STRATEGY

The ORL seeks province-wide compliance with the LRA through a series of interrelated compliance strategies. Our approach is built on guidelines recommended in *Lobbyists, Governments and Public Trust*, a report by the Organisation for Economic Co-operation and Development. [2]

COMPLIANCE PRINCIPLES

The strategy is founded on the following principles:

- The purpose of the LRA is to enhance transparency in lobbying;
- Lobbying in British Columbia must comply with current legislation and regulations;
- Cost-effective and non-punitive forms of resolving minor matters of non-compliance should be used whenever possible, including education, mediation and warnings;
- Enforcement activities will be carried out in a fair, objective, respectful and consistent manner;
- Educating the public about the existence of and uses of the public lobbyist registry is critical to achieving the policy objective of transparency;
- Ongoing dialogue with the stakeholder community – lobbyists, organizations, public office holders, fellow oversight agencies and the public – is essential to ensuring compliance strategies remain timely, cost-efficient and effective; and
- Effective compliance and enforcement is a mix of inter-related and coordinated strategies.

Possible non-compliance with the LRA is generally identified in three ways. First, the ORL conducts "environmental scanning," the proactive monitoring of websites, news articles, legislative proceedings published in Hansard reports and other sources to glean whether an individual or

[2] **For the complete text of the OECD report, see:** http://www.oecd.org/dataoecd/5/41/41074615.pdf

organization appears to be lobbying. This information is checked against the information in the registry to see if the individual or organization has registered the possibly registerable activities. Second, the ORL receives information from the public or other lobbyists about potential non-compliance. Lastly, the electronic registry has built-in surveillance capabilities and automatically checks the dates on registrations. If the registration has been filed outside the legislative timelines, the system sends an automatic message to the Registrar that a registration is possibly non-compliant. Information about possible non-compliance is reviewed and decisions to make further inquiries might result in individual cases proceeding to an administrative review.

Administrative reviews are part of the informal resolution process. Under an administrative review, further inquiries are made into individual cases of possible non-compliance. Depending on the result of those inquiries, a decision is made as to whether the case can be resolved through informal measures, such as public education regarding the nature of registerable activities, or whether the matter is more serious and should proceed to a formal investigation.

The avenue of last resort for achieving compliance is a formal investigation and the application of an administrative penalty. If a breach of the law or related regulations is confirmed by a formal investigation, the ORL will administer a proportionate administrative penalty and publish the name of the designated filer in the case and the nature of the breach by tabling the results of the investigation with the Speaker of the Legislative Assembly.

The following sections describe the ORL compliance strategy for 2011-2012, including all of the compliance strategies available to the Registrar under the LRA.

I. Incentives

Incentives are meant to encourage those individuals who are required by law to register to do so in a timely fashion. Registration should not be difficult, expensive or inconvenient. There are no fees to register, and designated filers can register twenty four hours a day, seven days a week.

We listen very carefully to feedback we receive and to suggestions put forward by lobbyists to improve the registration process. During 2011-2012, in response to suggestions from lobbyists and the public, the BC ORL carried out upgrades to the online registration system. Some upgrades streamlined the process of updating registrations and allowed for a condensed view of individual registrations for better ease in viewing and printing. As a result of these improvements, it is now easier for lobbyists to register and update their registrations.

II. Education and Outreach

The ORL has a legislated mandate to carry out public education about lobbying. We recognize that achieving province-wide compliance with the LRA depends first and foremost on ensuring that designated filers clearly understand the types of communications that trigger the legal requirement to register, the registration process and how to learn more about the legislation governing their activities, the LRA.

Some of our notable milestones and accomplishments during 2011-2012 fall into this category.

First Multi-Stakeholder Conference on Lobbying

In December of 2011, the ORL co-hosted a multi-stakeholder seminar on lobbying regulation with Simon Fraser University's Institute of Governance Studies. We hope that the seminar will be the first in a series of similar events.

This seminar, "Why the Road Exists and Where the Rubber Hits it", was a significant step forward in public and compliance education. The seminar was a constructive and open dialogue with industry, civil society, politicians, regulators and observers from many jurisdictions.

Topics discussed included:

- Measures for effective oversight;
- Post-employment cooling off periods during which former public office holders are not permitted to lobby former government colleagues;
- The possible introduction of a code of conduct for lobbyists in British Columbia; and
- Definition of lobbying and the ambiguity concerning the kinds of behaviours that trigger the requirement to register.

Public Consultation on a Possible Lobbyist Code of Conduct

Ethical issues around lobbying can arise if lobbyists or public office holders act in ways that damage the transparency or fairness of the process or weaken the public's confidence in government decisions. In BC, the conduct of public office holders is regulated by a combination of laws and policies. However there are no equivalent mechanisms regulating lobbyists' interaction with public office holders.

Early this year, we initiated a consultation on the possible development of a BC lobbyist code of conduct. This ongoing discussion involves lobbyists, public office holders, civil society, academics, and our fellow oversight agencies. Central questions in the consultation process are whether a lobbyist code of conduct is needed and whether a code could be effective. We anticipate tabling the results of this consultation in the Legislature in late fall of 2012.

Lobbyist Information Sessions

This year, the ORL also hosted a number of information sessions for lobbyists as part of the ongoing series of sessions for lobbyists we have undertaken over the last two years. These sessions, held in Victoria and Vancouver, were designed to support lobbyists in understanding the rules around registration, so that they can apply this knowledge to their daily activities and stay within the boundaries of the law. The sessions addressed a number of critical topics, including the definition of lobbying, the thresholds for registration, time limits for registration and information that must be supplied accurately to the Registrar in registrations.

Public Office Holder Information Sessions

In November, 2011, the ORL for the first time offered a series of information sessions on lobbying designed specifically for public office holders.

Lobbying involves two central figures: a lobbyist and a public office holder. Because public office holders are half of this relationship, we turned some of our educational focus this year to helping them understand lobbying laws in BC. The LRA does not require public office holders to report when they have been lobbied, to request verification of registration from a lobbyist before engaging in a communication or to refuse to meet with unregistered lobbyists.

However, since public office holders might find themselves being interviewed as part of a compliance investigation concerning a lobbyist, their familiarity with the rules under the LRA is a central factor in compliance enforcement. Effective enforcement of lobbying laws depends on public office holders understanding when they are being lobbied and lobbyists' obligations in their role as lobbyists.

Influencing BC Journal

The ORL continues to publish an online journal, *Influencing BC*, every four months. The journal has evolved into a forum for discussion and debate about a wide variety of lobbying topics and contains opinions from academics, oversight agencies, lobbyists and public office holders.

In 2011-2012, the ORL's success at recruiting contributors from among our stakeholder communities increased. *Influencing BC* brings together a range of opinion on lobbying and lobby regulation and is helping to build a policy community and stakeholder dialogue in this field. To the best of our knowledge, *Influencing BC* is the only journal of its kind that fosters multi-stakeholder commentary on lobbying and lobbying issues.

III. Review and Verification of Registrations

Information submitted to the Lobbyist Registry is checked for accuracy and completeness.

The LRA attempts to achieve transparency in lobbying by requiring lobbyists to disclose details of, among other things, who they are lobbying, on whose behalf and toward what end. Accuracy in these disclosures is critical to enabling appropriate public scrutiny of who is attempting to influence public decisions. Inaccurate, out-of-date or misleading information obstructs the public's right to know who is lobbying or who has lobbied government in any particular instance.

When returns are submitted containing inaccurate or incomplete information, ORL Registry staff request that filers make appropriate corrections. Since August 2011, when staff began compiling these data, corrections have been requested for 248 returns filed on the registry. The most common substantive corrections and issues requiring further review involve filers:

- Registering out-of-date targets for lobbying efforts, such as former Cabinet Ministers who no longer hold the portfolio or MLAs who have retired from public office;

- Listing "all" public agencies and MLAs and/or Cabinet Ministers as lobbying targets when this is not the case;
- Providing details of the desired outcomes of the lobbying effort that are too vague to satisfy the legal requirements for transparency;
- Not responding to requests for corrections; and
- Not updating their registrations within 30 days of changes occurring.

Under LRA Regulations, if all of the corrections are not submitted within 10 business days after the ORL makes the request, the return as corrected is considered to be received by the Registrar on the date on which the last correction is received. Tardy filers might therefore be deemed to have submitted late registrations, if they submit an initial return in time, but do not submit the requested corrections within ten days.

The review and verification process also involves conducting random verification audits to ensure the information that has been filed and certified by the designated filer as true is indeed accurate.

IV. Administrative Reviews

Random audits or environmental scans might reveal cases of possible non-compliance. Non-compliance occurs when an individual or organization is carrying out registerable activities, but has not registered, or has registered, but registered late or has submitted incomplete or inaccurate information to the Registrar. In those instances, the ORL makes relevant inquiries and reviews each case to determine how to proceed. Cases might be resolved informally if the review suggests that the matter is better dealt with through some means other than a formal investigation. For example, it might be determined that there has not been any non-compliance; or, if it appears that there has been non-compliance, the matter might be too trivial to warrant an investigation, or too much time might have elapsed for the matter to be considered current, among other possible reasons.

Table 1, below, summarizes administrative reviews and investigations carried out in 2011-2012.

Table I: Compliance Statistics, 2011-2012

Administrative Reviews Completed	**135**
Administrative reviews resolved informally	**94**
Formal Investigations resulting from administrative reviews	**19**
• Investigations not resulting in a penalty	4
• Administrative penalties levied	13
• Continuing investigations	2
Ongoing administrative reviews	**22**

V. Investigations and Administrative Penalties

In some cases, administrative reviews indicate the possibility of more serious cases of non-compliance, and the matter proceeds to the formal investigation stage.

Last year, the ORL commenced 19 investigations. Of these, four were instances that might have been resolved in the administrative review process, had the designated filers responded to our inquiries. Because they did not, the matter went forward to a formal investigation. These four were resolved without the need to issue an administrative penalty, thirteen resulted in penalties and two remain active.

First Administrative Penalties Levied

In 2011-2012, the ORL issued its first administrative penalties. Mr. Michael Bailey was investigated for 14 alleged infractions by Acting Deputy Registrar Jay Fedorak.

B.C. law requires a consultant lobbyist who makes an agreement to lobby on behalf of a client (that is, who has an "undertaking" to lobby) to register the activity within ten days of entering into the agreement. The lobbyist must declare who they are lobbying, on whose behalf, on what subject and toward what end, and they must certify that the information provided is true and accurate.

The law also requires consultant lobbyists to update any changes to their registrations, including the termination of an undertaking to lobby, within 30 days of that change occurring.

The Acting Deputy Registrar found that in seven instances, Mr. Bailey had registered undertakings for clients when no such undertaking existed, and that in six instances Mr. Bailey had updated registrations by extending the end date of the undertaking to lobby when in fact the undertaking had ended.

The Acting Deputy Registrar found that Mr. Bailey's actions undermined the integrity of the Registry and clouded the transparency it is supposed to provide.

In assessing an administrative penalty of $325, the Acting Deputy Registrar found that the case involved "unusual" circumstances which warranted a small penalty, including the fact that these were first offences, that Mr. Bailey did not obtain any financial benefit from his actions, and that when notified of his errors, Mr. Bailey corrected them immediately.

The LRA requires that all investigations resulting in administrative penalties be tabled in the BC Legislative Assembly. The investigation reports were tabled on April 24, 2012.

Although the ORL will continue to rely heavily on non-punitive compliance measures such as public education, the Registrar intends to issue further administrative penalties when circumstances warrant them.

3. THE YEAR IN NUMBERS

ACTIVE REGISTRATIONS

The law requires that "designated filers" be responsible for registering all persons who should be registered. The LRA recognizes two types of lobbyists, **consultant lobbyists**, individuals who are hired to represent clients (an "undertaking") and **in-house lobbyists**, employees of organizations who lobby on behalf of their organization. Consultant lobbyists are their own designated filers and must register themselves. The designated filer for an organization is the most senior officer in the organization who is paid for his or her work. Designated filers register on behalf of the organization, listing as in-house lobbyists all staff members who contribute significantly to the lobbying effort. Organizations are required to register once the collective lobbying efforts of relevant staff members reach 100 hours.

"Active registrations" means all registrations for lobbying that were active at some point during the 2011-2012 fiscal year. This includes registrations that began before the year started and continued into or through the year and those that began during the year.

FIGURE 1: ACTIVE REGISTRATIONS FOR 2010-2011 AND 2011-2012

Figure 1 shows significant increases in all three categories over the past year. The number of registrations by consultant lobbyists increased by 54%, the number of organizations that registered increased by 43% and the number of in-house lobbyists employed by organizations increased by 48%. We believe that this increase is due in large part to our sustained focus on public education,

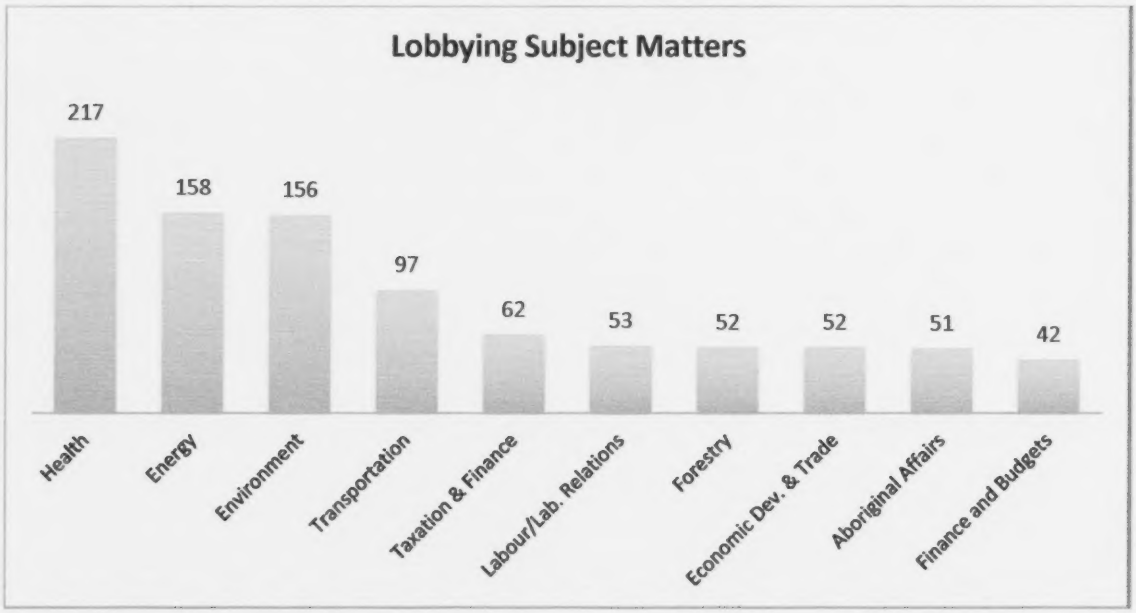
which is helping to raise awareness regarding what lobbying is, according to the law, and how to register on the online lobbyist registry.

➢ Subject Matters

Figure 2 shows the ten most-frequently-lobbied subject matters throughout 2011-2012.

The chart shows that **Health**, **Energy** and **Environment** were the most frequent subjects of registered lobbying.

Figure 2: Lobbying Subject Matters, 2011-2012



Together, the top three subject matters comprise 57% of lobbying instances listed on the registry. This statistic is very similar to the top subject matters for 2010-2011: last year, the top three subject matters, in order, were Health, Environment and Energy, which together comprised 53% of registered subject matters.

Table 2 lists the intended outcomes identified by registered lobbyists in 2011-2012. Intended outcomes are the results that lobbyists hope to achieve by lobbying public office holders.

TABLE 2: INTENDED OUTCOMES OF LOBBYING

Intended Outcome	# Instances	% Total
Arranging meeting between an individual and a public office holder for purpose of lobbying	2430	36%
Development, establishment, amendment or termination of any program, policy or decision	2251	34%
Introduction, modification or repeal of legislation, a bill or regulation	1135	17%
Arranging meeting between an individual and a public office holder	511	8%
Awarding, amendment or termination of a contract, grant or financial benefit	313	5%
Total:	**6640**	**100%**

As the table indicates, the three most common intended outcomes this year were **arranging a meeting to lobby**, and outcomes to do with **programs, policies, decisions or legislation**. Together, these three intended outcomes comprised 87% of all intended outcomes of lobbying.

4. FINANCIAL REPORTING

In addition to being the Registrar of Lobbyists, the person who is the Registrar also holds a separate appointment as the Information and Privacy Commissioner for BC.

The two positions are independent officers of the British Columbia Legislature, and are independent of each other. Although the two positions are independent of each other, the funding for both independent offices of the Legislature is provided through a vote appropriation (Vote 5) of the Legislative Assembly. Details of the ORL finances are reported out through the OIPC financial reports.

Figure 3 shows a break-down of the ORL budget for the 2011-2012 fiscal year.

FIGURE 3: ORL BUDGET FOR 2011-2012

Category	Amount
Salaries & Benefits	$404,000.00
Travel	$12,000.00
Contracts (System support, Web hosting and Legal services)	$141,000.00
Administrative Expenses (Data and word processing, Office expenses, Utilities and Supplies)	$28,000.00
Public Information Statutory Reports	$15,000.00
Totals:	**$600,000.00**

For more information, see pp. 22 and following of the OIPC Annual Report for 2011-2012 at the following link: http://www.oipc.bc.ca/publications/annual_reports/OIPC_AR_2011_12.pdf